



The Texas Payday Law

BY BETTY L. BROWN

The Texas Payment of Wages Act ("Payday Law") governs the time and manner of the payment of wages to Texas employees and provides a remedy against employers that fail to pay wages.

Does the Payday Law cover all employees in Texas?

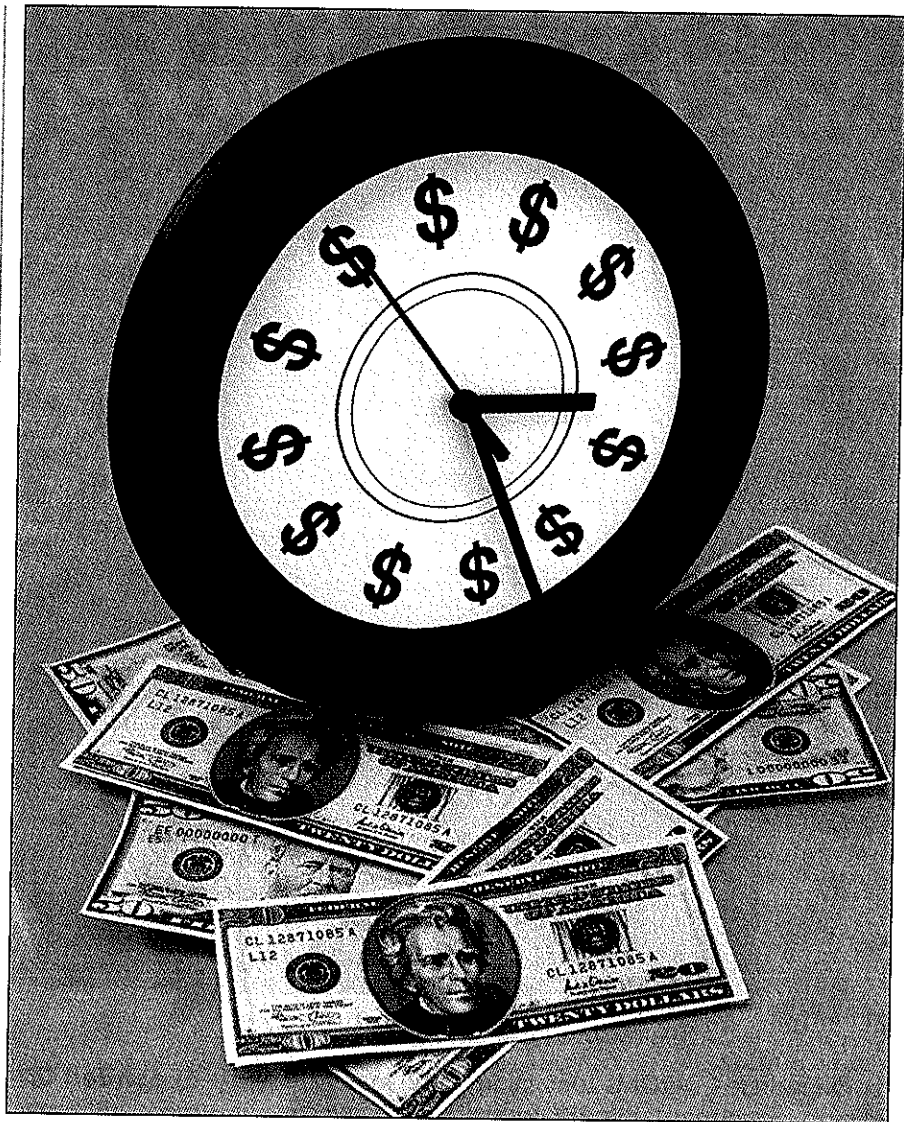
The Payday Law applies to private employers only. All private Texas business entities, regardless of size, are covered by the Payday Law. All persons who perform a service for compensation are considered employees under the Payday Law, with the exceptions of those providing services for close relatives and those working as independent contractors.

How are "wages" defined under the Payday Law?

The Payday Law defines the term "wages" to include virtually every conceivable form of compensation for services rendered by an employee, regardless of whether "wages" are calculated by time, task, commission, or any other basis. The term "wages" also includes compensation that does not directly reflect services rendered, including vacation pay, holiday pay, sick pay, parental leave pay, and severance pay, so long as it is paid to the employee pursuant to a written agreement or policy of the employer. Expense reimbursements are not "wages" under the Payday Law and, therefore, are not covered.

Can my employer take deductions from my wages?

The employer may not make deductions unless ordered to do so by a court of competent jurisdiction (e.g., court-



ordered child support payments); authorized to do so by state or federal law (e.g., IRS withholding); or authorized in writing by the employee for a lawful purpose. The latter category is the one that causes many problems. Authorizations that are too general or too

broad may not be given effect. Deductions for out-of-pocket loans to an employee, even though there is an oral agreement to repay, or even to repay out of a particular wage payment, will not be allowed, unless the deduction is authorized in writing.

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How often should I get paid?

An employee who qualifies as a bona fide executive, administrator, or professional must be paid at least once a month. All other employees must be paid at least twice a month. As much as possible, each pay period within the month must consist of an equal number of days.

When will I receive my final paycheck if I am terminated or I quit?

An employee who has been terminated from employment must be paid in full within six calendar days after the employee's discharge. An employee who voluntarily quits his or her employment, must be paid in full on or before the next regularly scheduled pay day. Wages paid on commission and bonuses must be paid in a timely manner as agreed by the employer and the employee, or according to the terms of a governing, collective bargaining agreement.

What remedies are available if I believe that my rights have been violated under the Payday Law?

An employee who believes his or her employer has violated the Payday Law may pursue administrative remedies with the Texas Workforce Commission (TWC) or bring a common law cause of action, separate and apart from the Payday Law, typically for collection of a debt or breach of contract. To initiate a claim for wages under the Texas Labor Code, the employee must file, in person or by mail, a TWC Wage Claim form no later than the 180th day after the date the wages claimed became due for payment. To obtain a wage claim form, an employee may call the Labor Department of the TWC at (800)832-9243 or visit www.twc.state.tx.us.

What are the procedures after a wage claim is filed?

Upon an employee's timely filing of a wage claim form, the TWC must investigate the charge and issue a "Preliminary Wage Determination Order" and notify each party of its determination. If the TWC finds the employer acted in bad faith, it may order the employer to pay an administrative penalty over and above the payment of wages. The amount of this administrative penalty is the amount of wages claimed by the employee or \$1,000, whichever is less.

Either party may contest the Preliminary Wage Determination Order by requesting a hearing, in writing, no later than 21 days after the date the TWC mailed the order. Upon receipt of a party's request for hearing, the TWC has 21 days to mail a notice of hearing. The hearing must take place within 45 days from the date the TWC mailed the notice.

Appeal hearings are usually held by telephone conference call; any party may present witness testimony under oath and submit documentary evidence. After testimony is concluded, the hearing officer renders a written order for the payment of wages or a finding that no wages are due. This decision states the amount of wages due and any penalty that has been assessed and advises the parties of their right to judicial review.

What if I am dissatisfied with the results?

Either party dissatisfied with the results of the hearing may file a written motion for rehearing. This motion must be filed within 14 days after the date on which the decision was mailed. Compliance with this time limit is critical — unless a motion for rehearing is filed or

the TWC reopens the hearing, the order becomes final after 14 days.

How do I get my money?

If the final order of the TWC requires the payment of wages or a penalty, the party must either deposit into a TWC escrow account the total amount ordered to be paid or file with the court a timely affidavit of inability to pay. The money deposited is placed in an interest-bearing escrow account to be disbursed at the conclusion of the judicial process, with the interest being paid to the prevailing party.

Within 30 days after a final order of the TWC is mailed, either party may file for judicial review in a court of competent jurisdiction. In the petition for judicial review, the TWC and all parties to the proceedings before the TWC must be made parties to the suit. Again the 30-day time limit is critical. If the appeal for judicial review is filed late, the court will have no jurisdiction to hear the case.

When an order for an employer to pay money to the TWC for the use and benefit of an employee has become final, the law allows for administrative liens and bank levies. The TWC may assign the administrative lien to the claimant at the claimant's request.

The Payday Law also provides for criminal penalties against employers that (1) intend, at the time the employee is hired, to avoid paying wages, and (2) fail to pay wages in response to a demand. In such cases, the employer is subject to imprisonment for two to 10 years, plus a fine of up to \$10,000.

Both employees and employers should be aware of the Texas Payday Law so they will know their rights and responsibilities under the law. ☪